IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Crl.L.P..No. 478 of 2007()

STC.559/2007 of J.M.F.C.-II, MANANTHAVADY

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PETITIONER/COMPLAINANT

P.K.AUGUSTHY, S/O. KURIAN,
PANCHAKUZHIYIL VEEDU, EDAVAKA POST,
MANANTHAVADY.

BY ADV. SRI.N.HARIDAS
SRI.P.N.SASIDHARAN

RESPONDENTS: ACCUSED & STATE

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1. P.V.MOIDU,
PALLIVALAPPIL VEEDU, PANNICHAL AMSOM,
ELLUMANDAM POST, MANANTHAVADY.

2. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.C.M.KAMAPPU FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 478 of 2007

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Dated this the 13th day of July,2007

O R D E R

This is a petition to grant special leave to appeal filed by the complainant in S.C.No.559/2005 on the file of the Judicial Magistrate of the First Class-II, Mananthavady. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.1,05,000/- from the petitioner for business purpose and in discharge of the above debt, he issued Ext.P1 cheque to the petitioner and when the cheque was presented for collection, it was dishonoured for insufficiency of funds. On complying the statutory formalities, the complaint has been filed before the court. To prove the case against the 1st respondent, the complainant himself was examined as PW1 and Exts.P1 to P6 were marked. After closing the evidence on the side of the prosecution, the 1st respondent was questioned under section 313 Cr.P.C.. He denied all the incriminating circumstances against him in the evidence of PW1 and stated that he borrowed an amount of Rs.45,000/- from the petitioner and issued a blank cheque as security for that amount. It is also stated that a sum of Rs.75,000/- was paid to the petitioner in 15 monthly instalments of Rs.5,000/- each. On the side of the defence, DW1 to DW4

were examined and Exts.D1 to D6 were marked. After considering the entire evidence adduced on both sides, the trial court found that the defence had successfully rebutted the presumption available under section 139 of the Negotiable Instruments Act and it was proved that Ext.P1 cheque was not issued for any legally enforceable debt or liability. Hence, the 1st respondent was found not guilty and he was acquitted under section 255(1) Cr.P.C.

The trial court had considered the entire case and found that the only inference that could be taken from the evidence given by witnesses was that Ext.P1 cheque was not issued for the transaction mentioned in the complaint or in the proof affidavit. Considering the entire facts and circumstances of the case, this Court is of the view that the finding of the trial court that the cheque was not issued for any legally enforceable debt or liability is correct and hence, it requires no interference by this Court. Accordingly, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. /200

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ORDER

-6-2007